8. Should the incumbent be required to provide directory assistance listings and other operator functions to the new entrant, and at what cost?

9. Should new entrants providing residential local service be required to offer service at reduced rates to qualified customers in compliance with the Virginia Universal Service Plan currently applicable to incumbent local exchange telephone companies?

10. Should new entrants be required to meet commission-established quality of service standards? If not, how will this affect traffic and service between competing local exchange carriers?

11. Should costing requirements be established for rates associated with interconnection arrangements and unbundled elements of competing local exchange carriers? Should a floor and/or ceiling be utilized, and on what basis (*e.g.*, long run incremental, stand alone, etc.)? Should any such requirements apply to both new entrants and incumbents?

12. Should the commission determine the specific components of a local exchange telephone carrier's network that should be unbundled? What should the unbundled network components include (*e.g.*, loops, ports, signaling links, etc.)?

13. In promulgating local exchange competition rules, how should the commission "consider the impact on competition of any government-imposed restrictions limiting the markets to be served or the services offered by any provider" as required by section (iii) of § 56-265.4:4 C 3? How can any such consideration be reconciled with section (i) which requires the commission to implement such rules that "promote and seek to assure the provision of competitive services to all classes of customers throughout all geographic areas of the Commonwealth by a variety of service providers"?

14. Should the commission adopt any additional regulatory requirements or restrictions related to the bundling of local exchange service with other service offerings, whether or not those services are telephone services? If so, what requirements should be implemented?

ATTACHMENT 1

TELEPHONE COMPANIES IN VIRGINIA

Amelia Telephone Corporation
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P.O. Box 22995
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Amelia Telephone Corporation
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Buggs Island Telephone Cooperative
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Burke's Garden Telephone Exchange
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Central Telephone Company of Virginia
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Bell Atlantic - Virginia
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Citizens Telephone Cooperative
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Clifton Forge-Waynesboro Telephone Company
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GTE South
Stephen C. Spencer, Reg. Director
External Affairs
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GTE
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Highland Telephone Cooperative
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Mountain Grove-Williamsville
Telephone Company
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New Castle Telephone Company
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New Hope Telephone Company
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North River Telephone Cooperative
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Pembroke Telephone Cooperative
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Peoples Mutual Telephone Company, Inc.
Mr. E. B. Fitzgerald, Jr.
President & General Manager
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Roanoke & Botetourt Telephone Company
Mr. Allen Layman, President
Daleville, Virginia 24083

Scott County Telephone Cooperative
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Shenandoah Telephone Company
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United Telephone-Southeast, Inc.
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Virginia Telephone Company
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ATTACHMENT 2

INTER-EXCHANGE CARRIERS

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d/b/a LDDSMetromedia Communications
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TDX Systems, Inc.
d/b/a Cable and Wireless, Inc.
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Regulatory Attorney
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Vienna, Virginia 22182

Sprint Communications of Virginia, Inc.
Mr. Kenneth Prohoniak
Staff Director, Regulatory Affairs
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Virginia MetroTel, Inc.
Mr. Richard D. Gary
Hunton & Williams
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Wiltel of Virginia
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VA.R. Doc. No. R95-558; Filed June 14, 1995, 11:46 a.m.

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Bureau of Financial Institutions

Title of Regulations: **VR 225-01-0604. Rules Governing Open-End Credit Business in Licensed Consumer Finance Offices.**
VR 225-01-0605. Rules Governing Real Estate Mortgage Business in Licensed Consumer Finance Offices.

Statutory Authority: § 6.1-244 and 12.1-13 of the Code of Virginia.

AT RICHMOND, JUNE 12, 1995

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: In the matter of amending the rules governing open-end credit and mortgage lending in offices licensed under the Consumer Finance Act

CASE NO. BFI950177

ORDER DIRECTING NOTICE

The Commission has authorized certain licensees under the Consumer Finance Act ("the Act"), Chapter 6 (Section 6.1-244 et seq.) of Title 6.1 of the Code of Virginia, to engage in the businesses of extending open-end credit and mortgage lending through affiliates operating in offices licensed under the Act, subject to certain rules, viz., "Rules Governing Open-End Credit Business in Licensed Consumer Finance Offices" (VR 225-01-0604) and "Rules Governing Real Estate Mortgage Business in Licensed Consumer Finance Offices" (VR 225-01-0605). The Bureau of Financial Institutions has reviewed these Rules, in light of the enactment of Chapter 2 of the 1995 Acts of the General Assembly, and proposes that the Commission amend the Rules as shown in the two designated attachments to this order.

It appearing that interested parties should be afforded notice of the proposed amended regulations and an opportunity to be heard in the matter of their adoption,

IT IS ORDERED:

(1) That this matter be assigned Case No. BFI950177 and papers relating to this matter be filed therein;

(2) That on or before July 31, 1995, any interested person may submit comments in support of, or in opposition to, the Commission's adoption of the amended regulations, or any such person may file a written request for a hearing, with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216. All comments and requests for a hearing shall make reference to Case No. BFI950177;

(3) That this order and two attachments shall be sent forthwith to the Registrar of Regulations for appropriate publication in the Virginia Register; and

(4) That the Bureau of Financial Institutions send a copy of this Order and the proposed amendments to every licensee under the Act, the Virginia Financial Services Association, the Virginia Citizens Consumer Council, the Virginia Poverty Law Center, and the Office of the Attorney General, Division of Consumer Counsel, and provide copies upon request to other interested persons.

This order and the proposed amendments shall also be available for inspection at, or distribution from, the Commission's Document Control Center, Tyler Building, First Floor, 13th and Main Streets, P.O. Box 2118, Richmond, Virginia 23216, telephone (804) 371-9033.

ATTESTED COPIES HEREOF shall be sent to the Commissioner of Financial Institutions and the Office of General Counsel.

VR 225-01-0604. Rules Governing Open-End Credit Business in Licensed Consumer Finance Offices.

~~1.~~ *§ 1. Separate entity required; compliance with applicable laws.*

The business of extending open-end credit shall be conducted by a separate legal entity, and not by the consumer finance licensee. *The separate, open-end credit entity ("separate entity") shall comply with all applicable state and federal laws.*

~~2. All governing State and Federal laws shall be observed.~~

~~3.~~ *§ 2. Separate books to be maintained; Bureau of Financial Institutions' access to records.*

Separate books and records shall be maintained by the licensee and the separate entity, and the books and records of the licensee shall not be commingled with those of the separate entity, but shall be kept in a different location within the office. *The Bureau of Financial Institutions shall be given access to the books and records of the separate entity, and*

Exhibit H

KAC

COMMONWEALTH OF VIRGINIA
State Corporation Commission
Richmond, Virginia 23216

In the Matter of Investigating Local Exchange Telephone Competition } Case No. PUC950018

COMMENTS OF METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

In this proceeding, the Commission has requested comment upon proposed rules for the implementation of competitive local exchange service and on certain questions with respect to the introduction of competition in the local exchange markets in Virginia. The Metropolitan Washington Airports Authority (the "Authority") has a vibrant interest in these matters as the result of its ongoing program to upgrade the telecommunications infrastructure and improve the quality and cost of service to itself, its tenants and the traveling public at Washington National and Washington Dulles International Airports ("National" and "Dulles"). As described more fully below, this program is being carried out through an innovative shared tenant service arrangement for which the Authority has contracted with Harris Corporation. It is our conviction that the early and orderly introduction of local exchange competition will enhance the Authority's ability to respond to the telecommunications needs of occupants and users of our airports.

The Authority comments only upon the two questions propounded by the Commission that bear directly upon it: whether local exchange carriers should be required to make local exchange services available for resale; and whether this Commission's existing Shared Tenant Service Rule should be amended to require Shared Tenant Service ("STS") providers to be certificated as new entrants.[1] We believe that the Commission should require all carriers providing local exchange service to permit resale of existing tariff offerings -- resale will further the basic policy goal underlying the 1995 amendments to the Utility Facilities Act. We also believe that the question of certification of STS providers should be decided on a case-by-case basis and that certification (and rate regulation) should be required only where the STS provider's activities interfere with the goal of a competitive market.

Statement of Interest

The Authority's interest in this proceeding is based upon its need for high-quality, cost-effective telecommunication services for itself, its tenants and the traveling public at National and Dulles. The Authority is a public body corporate and politic, created by the District of Columbia and Virginia through an interstate compact in 1985 (amended in 1987) for the purpose of "acquiring, operating, maintaining, developing, promoting, and protecting" National and Dulles "for public

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[1] The questions are set forth at Appendix B, paragraphs 6 and 7 of the Order inviting comments.

purposes."[8] In 1986, Congress authorized the Secretary of Transportation to transfer operation of the airports and to lease National and Dulles Airports to the Authority for 50 years.[9] The Lease was signed March 2, 1987. Thus, although the underlying land remains the property of the Federal Government, the Authority has legal control over the nearly 11,000 acres of land and the multiple terminals, buildings and facilities located at National and Dulles Airports. The airports, collectively, house approximately 200 tenants and serve approximately 28,000,000 passengers on an annual basis.

In April of 1993, the Authority entered into a contract for telecommunications services and the installation of facilities at the two airports. The goal the Authority had in soliciting bids and entering this fifteen-year contract was to obtain for the Authority, its tenants, and the traveling public an up-to-date telecommunications system capable of delivering a variety of services to meet these varying needs. Consistent with this Commission's order authorizing Shared Tenant Service, our contract with Harris provides that our tenants have the option of obtaining service directly from the certificated carrier serving the area. The rates charged by Harris for local telephone service will not exceed those of the exchange carrier. No rates can be changed without the approval of the Authority.

[8] 1987 Va. Acts of Assembly Ch. 665, §5.

[9] P.L. 99-500, Title VI.

The first thing required by the contract is an upgrade of the telecommunications infrastructure so that the Authority can take advantage of new services which are beyond the capability of the present system. Once the infrastructure has been installed tenants will be able to use the STS system for telecommunications service. Additional services will be offered as they become available.

This process has already begun, replacing outmoded and inadequate copper wiring with a fiber sonnet-ring and installing up-to-date customer premises equipment. There is a systems management feature which will immediately identify the source of malfunctions. We have replaced the more than 1,000 pay phones at the two airports with significantly improved equipment. The STS infrastructure has been fully installed at National and is now being tested. Because of disagreements with GTE over matters unrelated to this proceeding, full implementation of STS service at Dulles is somewhat behind the schedule at National.

Increased Competition will Enhance the Variety and Quality of Service

The Authority is persuaded that introducing competition at the local exchange level will enhance the variety and quality of service available at the airports we operate. Simply put, it can be expected to provide us, our tenants, and users of our airports with a greater choice of services and service-providers, either directly and/or through the STS system. This Commission began increasing competition in 1985 by authorizing carriers certificated in Virginia to provide all interexchange services rather than just interLATA interexchange services. Allowing competition among local exchange services expands upon that step.

To most fully realize the potential benefits from the competition, we urge the Commission to require local exchange carriers to allow resale and to regulate STS providers only when regulation is necessary to prevent them from interfering with the operation of the marketplace.

Local Exchange Carriers Should Be Required To Make Local Services Available for Resale

The conclusion of the overwhelming majority of state authorities that have considered the question is that requiring carriers to allow resale[4] of telecommunications services furthers the public interest. The Delaware Public Service Commission, for example, accepted the conclusion of its hearing examiner that, in principle, resale would yield a variety of public interest benefits, including: "a wider range of choices of products and services offered, improved efficiency and innovation, and lower prices." In the Matter of Sale, Resale and the Provision of Intrastate Telecommunications Services, Order Number 3283;0000 DEL PSC

[4] See discussion of meaning of "resale" on p. 10, infra.

Lexis 1 (June 18 1991). See also, Competition, Mass. D.P.U. Order 1731 (Oct. 18, 1985); Status of Competition, 87 PUR 4th 192, 210 (Mich., 1987).

These benefits have direct application to the many STS systems operating in Virginia -- in office buildings, complexes, malls, and on self-contained campuses, such as colleges and universities, and at National and Dulles Airports. Because there is no competition in the local exchange market in Virginia at the present time, all STS providers, including Harris, simply pass the rate established by the local exchange carrier ("LEC") directly through to their end-users. As competition, including resale, is introduced, STS providers can -- with or without themselves engaging in resale -- offer their end-users a greater choice of service and price. Because the end-user retains the option (under the Commission's STS rules) of taking service directly from carriers, users' choices are doubly enhanced.

Resale particularly serves the public interest because it permits rapid introduction of competition and, at the same time, assures that the benefits of competition are distributed broadly across the state. The Authority's situation is illustrative. Although located in GTE's territory, Dulles is in fairly close proximity to areas served by Bell Atlantic; and, therefore, competition between facility-based LEC's may emerge. By contrast, National Airport, because of its location at some distance from franchise boundaries, is less likely to benefit from facilities-based competition at an early time. Similarly, the capital costs associated with facilities-based competition may delay the introduction of innovative choices in rural and less-populated areas of the Commonwealth. Resale service, which entails a much smaller capital outlay, can be introduced much more quickly. Thus, by requiring all carriers to permit resale of their services, the Commission will create an environment in which the benefits of competition spread broadly and quickly throughout the state. This is confirmed by the experience of other states.

The experience of other states also makes clear that the benefits resulting from the introduction of resale can be realized without corresponding harm. Even at the Federal level, resale remains subject to the FCC's jurisdiction and the requirements of the Communications Act of 1934 that prohibit discrimination and unjust or unreasonable rates. The overwhelming majority of states have reached the conclusion that entities engaged in resale of local exchange service to the public or to a broad segment of the public are subject to the regulatory commission's jurisdiction and must be certificated. It is our assumption that, if this Commission does permit resale to the public or broad segments of the public, entities so engaged[6] would be subjected to the certification requirements of the Utility Facilities Act, as amended. This would enable the Commission to exercise the appropriate measure of control, forbidding resale or restricting it in the

[6]We discuss the distinction between an STS provider and a reseller of telecommunications services in the next section of these comments.

exceptional circumstances in which this form of local exchange competition may be found to be contrary to the public interest.

However, the Authority does not think it necessary or desirable for the Commission, by rule, to limit the categories of services that carriers must make available for resale. We recognize that this has been the practice in some states. In Maryland, for example, the Commission initially authorized the resale of WATS and message toll service, later removing all restrictions on resale. See, In The Matter of Transmittal 705, 78 Md. PSC 386 (1987). In our view, the better approach is that taken by the Massachusetts Department of Public Utility ("DPU") which specifically rejected carrier requests to limit the categories of service available for resale. The DPU acknowledged that there may be some circumstances in which resale produces "uneconomic" effects because the underlying service is priced below cost. It pointed out that the solution to this problem does not lie in restricting resale but, rather, in the implementation of cost-based rates for all services. See, In re New England Telephone and Telegraph Company, 81 P.U.R. 4th 394, 402 (1986). Certainly, there is no reason to impose limitations on the resale of business services. By their very nature, the services do not raise questions of "uneconomic" demand shifting.

For these reasons, the Authority strongly recommends that the Commission require all carriers in Virginia to permit resale of their services. We are particularly interested in early implementation of this policy because it will enhance our ability to meet our responsibility to ensure the availability of high-quality, cost-effective, local telecommunications services to the Authority, its tenants, and the traveling public at National and Dulles. In fact, it is clear that all Virginians would benefit.

The Determination of the Regulatory Status of Shared Tenant Services Should be Made on a Case-by-Case Basis

The experience of other states is of little direct guidance in formulating policies with respect to the regulatory status of STS providers. In part, this is because of the differences in the state jurisdictional statutes; and, in part, because certain considerations particular to a state may affect determination.[6] An examination of the decisions of other states does reveal certain general principles that, we believe, should inform this Commission's resolution of the question whether and in what circumstances STS providers should be regulated. These general principles lead to the conclusion that the determinations of regulatory status should be made on a case-by-case basis, in accordance with those principles.

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[6] For example, in Florida the PUC categorically exempted airports from its STS rule "due to the necessity to ensure the safe and efficient transportation of passengers and freight through the airport facility." See, Shared Local Exchange Service, 1987 PUC Lexis 1410*18. In other states, STS operations at hotels, motels, and in campus applications, such as universities and airports, have been statutorily exempted from the regulation.

The Commission's existing STS rules, and the implementing tariffs, treat STS as a non-communications, unregulated activity. We see no reason to change the rules, but this does not categorically exclude the possibility that, in some circumstances, regulation of an entity nominally an STS provider may be required. The basic test for deciding whether to regulate the activities of a particular STS operator is whether its activities are likely to interfere with the fundamental goal of competitive intrastate service.

There are three generally-accepted criteria or principles for making this determination. First, an STS provider should not be subject to certification (or regulation) merely because it is engaged in providing facilities -- cable, switches, and CPE -- that are used in the transmission and receipt of communications. That principle has long since been conclusively established as a matter of national policy. Secondly, if an STS provider does not resell services, it ought not be regulated. Resale is generally accepted to mean:

> "An activity wherein one entity subscribes to the communication services and facilities of another entity and reoffers communication service ... for profit."

In re Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 FCC 2d 261,271 (1976) (emphasis added); See, AT&T v. FCC, 572 F.2d 17, 20. (2d Cir., 1978); See also, Integrated Networks Services v. PUC of Colorado, 875 P.2d 1373, 1378 (Sup. Ct., Colo., 1994). By the same reasoning. If resale prices are controlled by users of the service, there is no need for certification. Third, even when the STS provider is engaged in resale, if users of the STS service have voluntarily selected that service (and remain free to opt out), the danger of abuse is substantially diminished.

By applying these principles it is possible to distinguish between STS providers which should be subject to certification and regulation, and those which ought not to be regulated. For example, competition among local exchange carriers may create the opportunity for STS providers, like Harris, to engage in resale of local exchange service. However, the Authority retains the right to approve any change in Harris' rates and so is protected from monopoly pricing. In other situations, the relationship between STS provider and premises owner may be one in which the owner has no interest in the service, other than to share in the profit from the charges to its tenants. In such a case, there may be no effective brake on rates.

Similarly, whether a particular STS provider should be subjected to certification will depends on whether tenants have the option of obtaining service from providers other than the STS operator. If service alternatives are available, the "limited, private nature" and noncommunications character of the STS operation "tends to be established." In re New England Telephone and Telegraph Company, 81 P.U.R. 4th 394, 402 (1986).

Under this Commission's existing STS rules, the STS provider and/or the tenant are responsible for the facilities needed to connect to the carrier. However, tenants must have the option of taking service, as opposed to facilities, directly from the certificated carrier. So long as the STS provider complies with the Commission's existing STS rules, certification and regulation would not be called for.

For these reasons, the Authority is convinced that the determination of the appropriate regulatory status of STS in an environment of competitive local exchange services ought not to be made by general rule. A rule categorically requiring all STS providers to be certificated would be overly prescriptive; a rule which categorically exempts all STS service providers might, in some circumstances, result in competitive dislocations and market failures. By contrast, a case-by-case approach, carried out in accordance with the criteria we have articulated, provides the Commission with the appropriate means of protecting the public while also assuring the availability of innovative, cost-effective service that STS was designed to achieve.

Respectfully submitted,

Metropolitan Washington Airports Authority

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